

Short Title: Tax Foreclosure/Commissioner's Fee.

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT IN A TAX FORECLOSURE ACTION, THE
COMMISSIONER'S FEE SHALL NOT BE INCLUDED IN THE AMOUNT NECESSARY
TO REDEEM THE REAL PROPERTY DURING THE PERIOD BETWEEN THE DATE
OF SALE AND THE JUDGMENT CONFIRMING THE SALE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-374 reads as rewritten:

"§ 105-374. Foreclosure of tax lien by action in nature of action to foreclose a mortgage.

(a) General Nature of Action. – The foreclosure action authorized by this section shall be
instituted in the appropriate division of the General Court of Justice in the county in which the
real property is ~~situated and shall be situated. The action is~~ an action in the nature of an action to
foreclose a mortgage.

(b) Taxing units may proceed under this section, either on the original tax lien created by
G.S. 105-355(a) or on the lien acquired at a tax lien sale held under former G.S. 105-369 before
July 1, 1983, with or without a lien sale ~~certificate; and the~~ certificate. The amount of recovery
in either case shall be the ~~same. To this end, it is hereby declared that the same, and the following~~
apply:

(1) The original attachment of the tax lien under G.S. 105-355(a) is sufficient to
support a tax foreclosure action by a taxing ~~unit, that the~~ unit.

(2) The issuance of a lien sale certificate to the taxing unit for lien sales held
before July 1, 1983, is a matter of convenience in record keeping within the
discretion of the governing body of the taxing ~~unit, and that issuance~~ unit.

(3) The issuance of ~~such these~~ certificates is not a prerequisite to perfection of the
tax lien.

(c) Parties; Summonses. – ~~The owner of record as of the date the taxes became delinquent and spouse (if any), any subsequent owner, all other taxing units having tax liens, all other lienholders of record, and all persons who would be entitled to be made parties to a court action (in which no deficiency judgment is sought) to foreclose a mortgage on such property, All of the following persons~~ shall be made parties and served with summonses in the manner provided by ~~G.S. 1A-1, Rule 4.~~ G.S. 1A-1, Rule 4:

(1) The owner of record as of the date the taxes became delinquent and the owner's spouse, if any.

(2) Any subsequent owner.

(3) All other taxing units having tax liens.

(4) All other lienholders of record.

(5) All persons who would be entitled to be made parties to a court action to foreclose a mortgage on the property in which no deficiency judgment is sought.

The fact that the owner of record as of the date the taxes became delinquent, any subsequent owner, or any other defendant is a minor, is incompetent, or is under any other disability shall not prevent or delay the tax lien sale or the foreclosure of the tax lien; and all ~~such of these~~ persons shall be made parties and served with summons in the same manner as in other civil actions.

Persons who have disappeared or who cannot be ~~located and located~~, persons whose names and whereabouts are unknown, and all possible heirs or assignees of ~~such these persons, persons~~ may be served by publication; and ~~such these~~ persons, their heirs, and assignees may be designated by general description or by fictitious names in ~~such an the~~ action.

(c1) Lienholders Separately Designated. – The word "lienholder" shall appear immediately after the name of each lienholder (including trustees and beneficiaries in deeds of

trust, and holders of judgment liens) whose name appears in the caption of any action instituted under ~~the provisions of~~ this section. ~~Such~~ This designation is intended to make clear to the public the capacity of ~~such these~~ persons ~~which that~~ necessitated their having been made parties to ~~such the~~ action. Failure to add ~~such this~~ designation to captions ~~shall does~~ not constitute grounds for attacking the validity of ~~actions an action~~ brought under this ~~section, section~~ or ~~titles the title~~ to real property derived from ~~such actions the action~~.

(d) Complaint as Lis Pendens. – The complaint in an action brought under this section shall, from the time it is filed in the office of the clerk of superior court, serve as notice of the pendency of the foreclosure action, and every person whose interest in the real property is subsequently acquired or whose interest ~~therein in the property~~ is subsequently registered or recorded shall be bound by all proceedings taken in the foreclosure action after the filing of the complaint in the same manner as if those persons had been made parties to the action. It ~~shall not be is not~~ necessary to have the complaint cross-indexed as a notice of action pending to have the effect prescribed by this ~~subsection (d) subsection~~.

(e) Subsequent Taxes. – The complaint in a tax foreclosure action brought under this section by a taxing unit shall, in addition to alleging the tax lien on which the action is based, include a general allegation of subsequent taxes ~~which that~~ are or may become a lien on the same real property in favor of the plaintiff unit. Thereafter it shall not be necessary to amend the complaint to incorporate the subsequent taxes by specific allegation. In case of redemption before confirmation of the foreclosure sale, the person redeeming shall be required to pay, before the foreclosure action is discontinued, at least all taxes on the real property ~~which that~~ have at the time of discontinuance become due to the plaintiff unit, plus penalties, interest, and ~~costs thereon costs~~. Immediately prior to judgment ordering sale in a foreclosure ~~action (if action, if~~ there has been no redemption prior to that ~~time); time~~, the tax collector or the attorney for the plaintiff unit shall file in the action a certificate setting forth all taxes ~~which that~~ are a lien on the real property

in favor of the plaintiff ~~unit (other unit, other~~ than taxes the amount of which has not been
definitely ~~determined)-determined.~~

(e1) Taxes Paid by Plaintiff. – Any plaintiff in a tax foreclosure ~~action (other action, other~~
than a taxing ~~unit)-unit,~~ may include in ~~his-the~~ complaint, originally or by amendment, all other
taxes and special assessments paid by ~~him-which-the plaintiff that~~ were liens on the same real
property.

(f) Joinder of Parcels. – All real property within the taxing unit subject to liens for taxes
levied against the same taxpayer for the first year involved in the foreclosure action may be joined
in one action. However, if real property is transferred by the listing taxpayer subsequent to the
first year involved in the foreclosure action, all subsequent taxes, penalties, interest, and costs
~~(for-for~~ which the property is ordered sold under ~~the terms of this Subchapter)-this Subchapter~~
shall be prorated to ~~such-the~~ property in the same manner as if payments were being made to
release ~~such-the~~ property from the tax lien under ~~the provisions of~~ G.S. 105-356(b).

(g) Special Benefit Assessments. – A cause of action for the foreclosure of the lien of any
special benefit assessments may be included in any complaint filed under this section.

(h) Joint Foreclosure by Two or More Taxing Units. – Liens of different taxing units on
the same parcel of real property, representing taxes in the hands of the same tax collector, shall
be foreclosed in one action. Liens of different taxing units on the same parcel of real property,
representing taxes in the hands of different tax collectors, may be foreclosed in one action in the
discretion of the governing bodies of the taxing units.

The lien of any taxing unit made a party defendant in any foreclosure action shall be alleged
in an answer filed by the taxing unit, and the tax collector of each answering unit shall, prior to
judgment ordering sale, file a certificate of subsequent taxes similar to that filed by the tax
collector of the plaintiff unit, and the taxes of each answering unit shall be of equal dignity with
the taxes of the plaintiff unit. Any answering unit may, in case of payment of the plaintiff unit's

taxes, continue the foreclosure action until all taxes due to it have been paid, and it ~~shall not be~~
~~is not~~ necessary for any answering unit to file a separate foreclosure action or to proceed under
G.S. 105-375 with respect to ~~any such the~~ taxes.

If a taxing unit properly served as a party defendant in a foreclosure action fails to answer
and file the certificate [of subsequent taxes] provided for in ~~the preceding paragraph, this~~
~~subsection~~, all of its taxes shall be barred by the judgment of sale except to the extent that the
purchase price at the foreclosure ~~sale (after sale, after~~ payment of costs and of the liens of all
taxing units whose liens are properly alleged by complaint or answer and ~~certificates) certificates~~,
~~may be is~~ sufficient to pay ~~such the~~ taxes. However, if a defendant taxing unit is plaintiff in
another foreclosure action pending against the same property, or if it has begun a proceeding
under G.S. 105-375, its answer may allege that fact in lieu of alleging its liens, and the court, in
its discretion, may order consolidation of ~~such the~~ actions or such other disposition ~~thereof (and~~
~~such disposition of the costs therein) of the actions, including disposition of the costs~~, as it ~~may~~
~~deem deems~~ advisable. ~~Any such The~~ order may be made by the clerk of the superior court,
subject to appeal as provided in G.S. 1-301.1.

(i) Costs. —~~Subject to the provisions of this subsection (i), Except as modified by this~~
~~subsection~~, costs may be taxed in any foreclosure action brought under this section in the same
manner as in other civil actions. When costs are collected, either by payment prior to the sale or
upon payment of the purchase price at the foreclosure sale, the fees allowed officers shall be paid
to those entitled to receive them. In foreclosure actions in which the plaintiff is a taxing unit, no
prosecution bond shall be required.

The word "costs," as used in this ~~subsection (i), subsection~~, ~~shall be construed to include one~~
~~includes a~~ reasonable attorney's fee for the plaintiff in such amount as the court shall, in its
discretion, determine and allow. When a taxing unit is made a party defendant in a tax foreclosure
action and files ~~answer therein, there may be included an answer, the court may include~~ in the

costs an attorney's fee for the defendant unit in ~~such amount as the court shall, an amount that~~
~~the court,~~ in its discretion, ~~determine and allow.~~ determines and allows. The governing body of
any taxing unit may, in its discretion, pay a smaller or greater sum than that allowed as costs to
its attorney as a suit fee, and the governing body may allow a reasonable commission to its
attorney on taxes collected by ~~him after they have been placed in his hands; or the attorney.~~
Alternatively, the governing body may arrange with its attorney for the handling of tax
foreclosure suits on a salary basis or may make any other reasonable agreement with its ~~attorney~~
~~or attorneys.~~ attorney. Any arrangement made between a taxing unit and its attorney may provide
that attorneys' fees collected as costs in foreclosure actions shall be collected for the use of the
taxing unit.

In any foreclosure action in which ~~real property is actually sold after judgment, the court~~
~~enters a judgment confirming the sale of real property,~~ costs shall include a commissioner's fee
to be fixed by the court, not exceeding five percent (5%) of the purchase ~~price; and in price.~~ In
case of redemption ~~between the date of sale and the order prior to the judgment~~ of confirmation,
however, the commissioner's fee shall not be added to the amount otherwise necessary for
redemption. In case more than one sale is made of the same property in any action, the
commissioner's fee may be based on the highest amount bid, but the commissioner shall not be
allowed a separate fee for each such sale. The governing body of any plaintiff unit may request
the court to appoint as commissioner a salaried official, attorney, or employee of the unit and,
when the requested appointment is made, may require that the commissioner's fees, when
collected, be paid to the plaintiff unit for its use.

(j) Contested Actions. – Any action brought under this section in which an answer raising
an issue requiring trial is filed within the time allowed by law ~~shall be is~~ entitled to a preference
as to time of trial over all other civil actions.

(k) Judgment of Sale. – Any judgment in favor of the plaintiff or any defendant taxing unit in an action brought under this section shall order the sale of the real property or as much as may be necessary for the satisfaction of all of the following:

- (1) Taxes adjudged to be liens in favor of the ~~plaintiff (other plaintiff, other~~ than taxes the amount of which has not been definitely ~~determined)~~ determined, together with penalties, interest, and ~~costs thereon~~ costs.
- (2) Taxes adjudged to be liens in favor of other taxing ~~units (other units, other~~ than taxes the amount of which has not yet been definitely ~~determined)~~ determined, if those taxes have been alleged in answers filed by the other taxing units, together with penalties, interest, and ~~costs thereon~~ costs.

The judgment shall appoint a commissioner to conduct the sale and shall order that the property be sold in fee simple, free and clear of all interests, rights, claims, and liens whatever, except that the sale shall be subject to (i) taxes the amount of which cannot be definitely determined at the time of the judgment, (ii) taxes and special assessments of taxing units which are not parties to the action, ~~and~~ and (iii) in the discretion of the court, taxes alleged in other tax foreclosure actions or proceedings pending against the same real property.

In all cases in which no answer is filed within the time allowed by law, and in cases in which answers filed do not seek to prevent sale of ~~said the~~ property, the clerk of the superior court may enter the judgment, subject to appeal as provided in G.S. 1-301.1.

(l) Advertisement of Sale. – The sale ~~shall be advertised~~, and all necessary resales shall be ~~advertised~~, advertised in the manner provided by Article 29A of Chapter 1 of the General ~~Statutes or by any statute enacted in substitution therefor~~ Statutes.

(m) Sale. – The sale shall be by public auction to the highest bidder and shall, in accordance with the judgment, be held at the courthouse door on any day of the week except a Sunday or legal holiday when the courthouse is closed for transactions. ~~In~~ In actions brought by

a municipality that is not a county seat, the court may, in its discretion, direct that the sale be held at the city or town hall ~~door.)~~ door.

(m1) Deposit from Bidder. – The commissioner conducting the sale may, in ~~his~~ the commissioner's discretion, require from any successful bidder a deposit equal to not more than twenty percent (20%) of ~~his bid, which deposit, in the bid.~~ In the event that the bidder refuses to take title and a resale becomes necessary, the deposit shall be applied to pay the costs of sale and any loss resulting. ~~(However, this provision shall not deprive~~ Nothing in this subsection deprives the commissioner of ~~his~~ the commissioner's right to sue for specific performance of the ~~contract.)~~ contract. No deposit shall be required of a taxing unit that has made the highest bid at the foreclosure sale.

(n) Report of Sale. – Within three days following the foreclosure ~~sale~~ sale, the commissioner shall report the sale to the court giving full particulars ~~thereof of the sale.~~

(o) Exceptions and Increased Bids. – At any time within 10 days after the commissioner files ~~his~~ the report of the foreclosure sale, any person having an interest in the real property may file exceptions to the report, and at any time within that 10-day ~~period~~ period, an increased bid may be filed in the amount specified by and subject to the provisions ~~(other than provisions in conflict herewith)~~ of Article 29A of Chapter 1 of the General ~~Statutes or the provisions (other than provisions in conflict herewith) of any law enacted in substitution therefor.~~ Statutes, except as otherwise provided by this section. In the absence of exceptions or increased bids, the court may, whenever it deems ~~such action it~~ necessary for the best interests of the parties, order resale of the property.

(p) Judgment of Confirmation. – At any time after the expiration of 10 days from the time the commissioner files ~~his~~ the report, if no exception or increased bid has been filed, the commissioner may apply for judgment of confirmation, and in like manner ~~he~~ the commissioner may apply for ~~such~~ a judgment of confirmation after the court has passed upon exceptions filed,

or after any necessary resales have been held and reported and 10 days have elapsed. The judgment of confirmation shall direct the commissioner to deliver the deed upon payment of the purchase price. This judgment may be entered by the clerk of superior court subject to appeal as provided in G.S. 1-301.1.

(q) Application of Proceeds; Commissioner's Final Report. – After delivery of the deed and collection of the purchase price, the commissioner shall apply the proceeds as follows:

(1) First, to payment of all costs of the action, including the commissioner's fee and the attorney's ~~fee, which costs fee. The costs~~ shall be paid to the officials or funds entitled ~~thereto; to them.~~

(2) Then to the payment of taxes, penalties, and interest for which the real property was ordered to be sold, and in case the funds remaining are insufficient for this purpose, they shall be distributed pro rata to the various taxing units for whose taxes the property was ordered ~~sold; sold.~~

(3) Then pro rata to the payment of any special benefit assessments for which the property was ordered sold, together with interest and ~~costs thereon; costs.~~

(4) Then pro rata to payment of taxes, penalties, interest, and costs of taxing units that were parties to the foreclosure action but ~~which that~~ filed no answers ~~therein; in the action.~~

(5) Then pro rata to payment of special benefit assessments of taxing units that were parties to the foreclosure action but ~~which that~~ filed no answers ~~therein, in the action,~~ together with interest and ~~costs thereon; costs.~~

(6) And any balance then remaining shall be paid in accordance with any directions given by the court and, in the absence of ~~such~~ directions, shall be paid into court for the benefit of the persons entitled ~~thereto. to it. (If If~~ the clerk is in doubt as to ~~who which person~~ is entitled to the surplus or if any

adverse claims are asserted ~~thereto, to the surplus,~~ the clerk shall hold the
surplus until rights ~~thereto to it~~ are established in a special proceeding
pursuant to ~~G.S. 1-339.71.)~~G.S. 1-339.71.

Within five days after delivering the deed, the commissioner shall make a full report to the court
showing delivery of the deed, receipt of the purchase price, and the disbursement of the proceeds,
accompanied by receipts evidencing all ~~such the~~ disbursements.

(r) Purchase and Resale by Taxing Unit. – The rights of a taxing unit to purchase real
property at a foreclosure sale and resell it are governed by G.S. 105-376."

SECTION 2. This act becomes effective [October 1, 2021], and applies to tax
foreclosure actions commenced on or after that date.